United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 17-0279**
	)	**Issued: January 26, 2018**
DEPARTMENT OF THE ARMY, Pentagon, Arlington, VA, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2016 appellant, through counsel, filed a timely appeal from a May 20, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established a recurrence of a medical condition beginning May 7, 2015 causally related to her accepted employment injury; and (2) whether she

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

has established that her claim should be expanded to include the additional conditions of chronic obstructive pulmonary disease (COPD), interstitial lung disease, nonspecific abnormal chest imaging, hypoxia, complex sleep apnea, hypersomulence, and lymphoma of the breast causally related to factors of her federal employment.

FACTUAL HISTORY

On April 26, 1990 appellant, then a 44-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging that she experienced itching and breaking out on her hands due to falling insulation. OWCP accepted that she was exposed to dust and fiberglass at work and that she sustained an employment-related aggravation of contact dermatitis of the bilateral hands and feet.[3] It paid appellant compensation for total disability from November 18, 1990 to March 24, 1991, after which she resumed work.[4]

On September 20, 1995 Dr. Robert Bloom, a Board-certified internist, evaluated appellant for a cough with periodic dyspnea and noted that she was exposed to dust at work. He diagnosed dust-induced asthma and allergic rhinitis and advised that the "majority of her problem is due to sinus drainage from her allergic rhinitis." Dr. Bloom recommended that appellant work in another location to reduce exposure to dust. In an accompanying attending physician's report (Form CA-20) dated September 20, 1995, he indicated by checking a box marked "yes" that her condition was related to employment factors. Dr. Bloom referred on the form to the attached September 20, 1995 medical report for the diagnosis, findings, and history of injury.

In a report dated April 22, 2015, Dr. John Koostra, a Board-certified pulmonologist, related that he had treated appellant since January 2007 and noted that she had a history of exposure to fiberglass and asbestos at work. He related that a computerized tomography (CT) scan of the thorax showed "increased interstitial and peribronchial cuffing" as well as granulomatous disease. Appellant also had restrictive and obstructive disease as demonstrated by pulmonary function study and had "been diagnosed with lymphoma of the left breast." Dr. Koostra diagnosed COPD, interstitial lung disease, nonspecific abnormal chest imaging, hypoxia, complex sleep apnea, hypersomulence, and lymphoma of the breast. He attributed the diagnoses to appellant's contact with fiberglass and asbestos. Dr. Koostra related, "The exposure to fiberglass and asbestos are involved with [interstitial lung disease] and from inflammatory markers involved in the pathophysiology cause of her diagnosis."

On August 17, 2015 Dr. Nancy Rubin, an osteopath, discussed appellant's diagnosis of primary, diffuse, large B-cell breast lymphoma, which she noted was very uncommon. She related, "There has been data that lymphoma can be caused by exposure to asbestos and/or

[3] A July 30, 1990 Phase 1 air quality assessment revealed carbon dioxide in the air, filters covered with dust and fungi, and deteriorating fiberglass insulation. It also found dust and fiberglass after obtaining a surface wipe sample in appellant's work location.

[4] By decision dated March 16, 1992, OWCP found that appellant received an overpayment of compensation in the amount of $690.17 as she returned to work on March 24, 1991, but received disability compensation until April 6, 1991. It further found that she was at fault in creating the overpayment.

fiberglass fibers. [Appellant] was exposed to these when she was employed at the [employing establishment]."

In a November 11, 2015 letter, counsel related appellant's history of exposure to insulation containing fiberglass and asbestos while working for the employing establishment. He noted that OWCP accepted her insulation exposure. Counsel asserted that appellant sustained B-cell lymphomas due to her contact with the insulation and requested that OWCP reopen her claim and expand acceptance to include lymphoma.

On February 17, 2016 appellant filed a notice of recurrence (Form CA-2a) of a medical condition causally related to her accepted employment injury. She related that she had retired from the employing establishment in 2001 due to her breathing difficulties and skin condition.

OWCP, by letter dated April 18, 2016, advised appellant of the definition of a recurrence of disability and requested that she submit additional factual and medical information, including a reasoned opinion from her attending physician addressing the relationship between her current condition and disability and the accepted work injury.

In a statement dated May 17, 2016, appellant asserted that she sustained lymphoma due to inhaling particles of dust and asbestos at the employing establishment and requested that OWCP expand acceptance of her claim. She also related that she required constant oxygen due to COPD and interstitial lung disease, which her physician attributed to asbestos exposure. Appellant took medication for her breathing that caused diabetes. She further had numerous side effects caused by the chemotherapy for the lymphoma.

By decision dated May 20, 2016, OWCP found that appellant had not established a recurrence or a consequential condition causally related to her accepted employment injury. It found that the medical evidence did not contain a rationalized opinion relating a medical condition to the accepted work injury.

On appeal counsel contends that OWCP erred in adjudicating the claim as a recurrence of disability rather than a request for claim expansion. He argues that appellant provided medical evidence showing that exposure to asbestos and fiberglass resulted in her lymphoma.

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(y) of OWCP's regulations provides in pertinent part:

> "Recurrence of medical condition means a documented need for further medical treatment after release from treatment of the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a 'need for further medical treatment after release from treatment' nor is an examination without treatment."[5]

[5] 20 C.F.R. § 10.5(y).

OWCP's procedures provide:

> *"After 90 days of Release from Medical Care* (Again, this should be based on the physician's statement or instruction to return PRN [per as needed], or computed by the [claims examiner] from the date of last examination.) The claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury."[6]

ANALYSIS -- ISSUE 1

Appellant last received medical treatment for her accepted condition of an aggravation of contact dermatitis of the bilateral hands and feet in 1990. On February 17, 2016 she filed a notice of recurrence of a medical condition beginning May 7, 2015 causally related to her accepted work injury. While OWCP indicated that appellant was filing a recurrence of disability, the Board notes that she specified on the Form CA-2a that she was alleging a recurrence of a medical condition. The issue, consequently, is whether she has submitted sufficient medical evidence to demonstrate a recurrence of a medical condition necessitating further medical treatment.

Appellant has the burden of proof to submit medical evidence supporting a causal relationship between her current condition and the accepted work injury.[7] On April 18, 2016 OWCP informed appellant of the type of evidence required to establish a recurrence; however, she did not submit any medical evidence substantiating that she required medical treatment beginning on or about May 7, 2015 causally related to her accepted aggravation of contact dermatitis of the bilateral hands and feet. Appellant has the burden of proof to furnish medical evidence from a physician who, on the basis of a complete and accurate medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound rationale.[8] She did not submit such evidence and thus failed to establish a recurrence of a medical condition.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[9] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (May 2003).

[7] *See J.F.*, 58 ECAB 124 (2006).

[8] *See J.B.*, Docket No. 11-1410 (issued January 5, 2012); *Mary A. Ceglia*, 55 ECAB 656 (2004).

[9] *Supra* note 2.

any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[10]

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[11] The opinion of the physician must be based on a complete factual and medical background of the claimant,[12] must be one of reasonable medical certainty,[13] and must explain the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[14]

ANALYSIS -- ISSUE 2

OWCP accepted appellant's 1990 occupational disease claim for an aggravation of contact dermatitis of the bilateral hands and feet. Appellant stopped work on November 18, 1990 and returned to her usual work on March 24, 1991.

On November 11, 2015 appellant, through counsel, requested that OWCP expand acceptance of the claim to include B-cell lymphoma. She subsequently requested expansion of her claim to include additional conditions including COPD and interstitial lung disease. OWCP found that she had not established a consequential injury; however, appellant has not maintained that she sustained these conditions as a consequence of her accepted aggravation of contract dermatitis of the bilateral feet and hands. Instead, in a May 17, 2016 statement, she attributed her lymphoma to inhaling dust and asbestos at the employing establishment. Appellant further advised that her physicians attributed her COPD and interstitial lung disease to asbestos exposure, and noted that the medication that she took to assist her breathing caused diabetes.

Where a claimant alleges that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.[15] The Board finds that appellant has not submitted sufficient medical evidence to establish that her claim should be expanded to include additional conditions.

Dr. Bloom, in a September 20, 1995 report, noted that appellant was exposed to dust at work and diagnosed asthma and allergic rhinitis as a result of exposure to dust. He recommended that she work in another location. Dr. Bloom, however, did not support his opinion with medical rationale. Medical evidence that states a conclusion, but does not offer any

[10] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *John J. Montoya*, 54 ECAB 306 (2003).

[12] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[13] *See S.D.*, 58 ECAB 713 (2007).

[14] *Judy C. Rogers*, 54 ECAB 693 (2003).

[15] *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16]

In a form report dated September 20, 1995, Dr. Bloom indicated by checking a box marked "yes" that appellant's condition was related to her employment factors. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[17]

On April 22, 2015 Dr. Koostra indicated that he had treated appellant since 2007 and discussed her history of exposure to fiberglass and asbestos at work. He diagnosed COPD, interstitial lung disease, nonspecific abnormal chest imaging, hypoxia, complex sleep apnea, hypersomulence, and breast lymphoma. Dr. Koostra attributed the diagnosed conditions to exposure to fiberglass and asbestos during the course of appellant's employment, noting that such exposure was linked with interstitial lung disease and inflammatory markers. OWCP has not accepted, however, that she was exposed to asbestos at work. As Dr. Koostra based his findings on an unsubstantiated history of asbestos exposure, his report is of diminished probative value.[18] Additionally, he did not explain how exposure to fiberglass over 20 years prior resulted in interstitial lung disease, hypoxia, COPD, abnormal imaging, sleep apnea, breast lymphoma, and hypersomulence other than to note that such exposure was involved with interstitial lung disease and inflammatory markers. Dr. Koostra's opinion is thus insufficient to meet appellant's burden of proof as he did not provide sufficient medical rationale to demonstrate that the conclusion reached regarding her condition was sound, logical, and rationale.[19]

On August 17, 2015 Dr. Rubin related that appellant had diffuse, primary large B-cell breast lymphoma, an uncommon diagnosis. She indicated that there was data indicating that exposure to asbestos and fiberglass could cause lymphoma and noted that appellant had such exposure while working at the employing establishment. Dr. Rubin, however, relied upon an uncorroborated history of appellant being exposed to asbestos during the course of her employment.[20] Additionally, the physician's opinion on causation consists only of a conclusory statement without supporting rationale; consequently, it is of little probative value.[21]

On appeal counsel argues that OWCP erred in adjudicating the claim as a recurrence of disability instead of a request to expand acceptance of the claim. While OWCP characterized the claims as one for a recurrence of disability, the Board finds that it considered medical evidence and properly found that it was insufficient to establish causation between the additional medical

[16] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[17] *See Deborah L. Beatty*, 54 ECAB 340 (2003).

[18] *See Joseph M. Popp*, 48 ECAB 624 (1997).

[19] *See B.S.*, Docket No. 15-0002 (issued February 27, 2015); *K.W.*, 59 ECAB 271 (2007).

[20] Medical evidence predicated on an inaccurate factual or medical history is of diminished probative value. *See Albert C. Brown*, 52 ECAB 152 (2000).

[21] *See B.M.*, Docket No. 13-1119 (issued March 18, 2014); *William C. Thomas*, 45 ECAB 591 (1994).

conditions claimed and her work injury. In order to establish causal relationship, a physician's opinion must be based on a complete and accurate factual and medical background and must be supported by medical rationale.[22] As discussed, appellant did not submit such evidence and thus failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of a medical condition beginning May 7, 2015 causally related to her accepted employment injury or that her claim should be expanded to include additional conditions causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.[23]

Issued: January 26, 2018
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[22] *Roger Dingess*, 47 ECAB 123 (1995).

[23] Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.